

**U.S. Department of Labor**

Board of Alien Labor Certification Appeals  
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Date: July 3, 2001

Case No.: **2000-INA-304**  
CO No.: **P1996-CA-09052656**

*In the Matter of:*

**P & R METALS, INC.**  
Employer,

*on behalf of*

**IGNACIO GONZALEZ**  
Alien.

Appearance: Leonard W. Stitz, Esq.  
Santa Ana, California

Certifying Officer: Panda Wong  
San Francisco, California

Before: Vittone, Burke and Wood  
Administrative Law Judges

**DECISION AND ORDER**

***Per Curiam:*** This case arises from the Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of alien labor certification for the position of maintenance mechanic.<sup>1</sup> The CO denied the application and Employer requested review pursuant to 20 C.F.R. §656.26.

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<sup>1</sup> Permanent alien labor certification is governed by Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20. We base our decision on the record upon which the CO denied certification and Employer's request for review, as contained in the appeal file ("AF") and any written arguments. 20 C.F.R. §656.27(c).

### **Statement of the Case**

On December 1, 1995, the Employer filed an application for labor certification to enable the Alien, Ignacio Gonzalez, to fill the position of Maintenance Mechanic (forklift). (AF 11). Eight years of school and two years of experience in the job offered were required.

On July 19, 1996, the California Employment Development Department (“EDD”) sent Employer a list of the applicants who had responded to its advertisement of the position offered, advising that contact with the applicants needed to be made within fourteen calendar days. (AF 25). In a letter dated September 4, 1996, Employer stated that it had a telephone conversation with U.S. applicant Redwell, who, while invited to a personal interview at the job site, never attended nor had the courtesy to contact Employer to reschedule the appointment. (AF 17).

In a Notice of Findings (“NOF”) dated March 10, 2000, the Regional Administrator proposed to deny certification because the Employer had failed to contact U.S. applicant Redwell in a timely manner. (AF 7). Employer was advised to submit a detailed accounting of its attempts to interview this applicant. Documentation required included dated return receipts of attempts to contact the applicant in writing, and telephone bills to substantiate telephone contact.

Employer submitted rebuttal on April 7, 2000, stating that the applicant was promptly contacted by telephone. (AF 5). In that telephone conversation, the applicant was invited to a personal interview at the job site, which the applicant never attended. Employer stated that it does not preserve records of telephone calls made to job applicants and that it was unreasonable to expect an employer to maintain such records.

A Final Determination was issued on June 14, 2000. (AF 3). Therein, the CO denied certification noting that without proof of the actual date of the attempt to contact U.S. Redwell, she was unable to be certain that a good-faith effort had been made to recruit this U.S. worker. It was determined that Employer had not convincingly shown its effort to make a compliant recruitment effort of U.S. workers.

By letter dated June 26, 2000, Employer filed a request for review of the denial of labor certification. (AF 1).

### **Discussion**

In its Statement of Position, Employer contends that it promptly contacted U.S. applicant Redwell, and that the CO's request for telephone bills is unnecessary and prejudicial to the Employer. Employer was clearly advised in the NOF, however, of the need to document its efforts to contact U.S. applicant Redwell. Employer's rebuttal failed to provide that documentation, consisting of no more than bare assertions.

Where a CO requests a document or information which has a direct bearing on the resolution of the issue and is obtainable by reasonable effort, the employer must produce it. *Gencorp*, 1987-INA-659 (Jan. 13, 1988) (*en banc*). Failure to submit documentation reasonably requested by the CO warrants denial of labor certification. *Rouber International*, 1991-INA-44 (Mar. 31, 1994). Employer herein failed to produce the requested documentation of timely contact with a seemingly qualified U.S. applicant. Employer has not provided a compelling reason for its failure to submit telephone records, its sole basis for refusing to produce the document being that it is "unreasonable."

In the instant case, Employer was requested to provide specific documentation of its prompt contact of U.S. applicant Redwell. The documentation required was not unreasonable or difficult to obtain, yet it was not produced. An employer's failure to produce a relevant and reasonably obtainable document requested by the CO is ground for the denial of certification. *STLO Corporation*, 1990-INA-7 (Sept. 9, 1991). Such is the case here. Labor certification was properly denied.

### **ORDER**

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered at the direction of the panel:

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Todd R. Smyth,  
Secretary to the Board  
of Alien Labor Certification Appeals

**NOTICE OF PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of Board decisions; or (2) when the proceeding involves a question of exceptional importance. Petitions for review must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, N.W.  
Suite 400 North  
Washington, D.C., 20001-8002.

Copies of the petition must also be accompanied by a written statement setting forth the date and manner of that service. The petition must specify the basis for requesting review by the full Board, with supporting authority, if any, and shall not exceed five double-spaced typed pages. Responses, if any, must be filed within ten days of service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of a petition the Board may order briefs.